

APEREO FOUNDATION FISCAL SPONSOR AGREEMENT

The Apereo Foundation (“Apereo” or “Sponsor”), a New Jersey non-profit corporation, has determined providing Fiscal Sponsorship to [ORGANIZERS OF THE PROJECT] (“Sponsored Organization”) in support of [PROJECT NAME] (“the Project”) is consistent with its mission to foster, develop, and sustain open technologies and innovation in support learning, teaching, and research.

For purposes of this Agreement, the Project is:

[Describe the Project, including its goals, and if it is expected to terminate upon reaching its goals or continue through a particular End Date. Also include any external references, for example, a website, supporting documentation, etc. Also include the physical location where the Project is organized or holds regular meetings.]

Accordingly, Apereo and the Sponsored Organization hereby agree relative to the implementation and operation of the Project:

1. Fiscal Sponsorship of the Project. Apereo hereby agrees to sponsor the Project and as of the Effective Date below, to assume administrative, programmatic, financial, and legal responsibility for purposes of the requirements of funding organizations. The Sponsored Organization agrees to implement and operate the Project, in accordance with the terms of this agreement and with any requirements imposed by funding organizations.

2. Operation Consistent with Non-Profit Status. The Project shall be operated in a manner consistent with Apereo’s tax-exempt status and as described in this agreement. No material changes in the purposes or activities of the Project shall be made without prior written permission of Apereo and in accordance with any requirements imposed by funding organizations, nor shall the Sponsored Organization carry on activities or use funds in any way that jeopardizes Apereo’s tax-exempt status. In particular, any revenue to the Sponsored Organization other than from **direct donations from various people or organizations** must be cleared with Apereo before excepted. This includes any funds that the Sponsored Organization proposes to raise via the publishing of materials, underwriting conferences, selling branded merchandise, providing services, or similar activities.

3. No Political Activities. The Sponsored Organization shall not, and shall not permit the Project to, attempt to influence legislation or participate or intervene in any political campaign on behalf (or in opposition to) any candidate for public office or otherwise engage in the carrying on of propaganda (within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986).

4. Establishment of a Segregated Account. On behalf of the Sponsored Organization, Apereo will establish and operate for the use of the Project a designated Project Fund (“Fund”) so designated on Apereo’s books. All amounts deposited into a Project Fund will be used in its support, less administrative charges, if any, and subject to the conditions set forth below.

5. Fiduciary Responsibility of Apereo. Apereo has a fiduciary responsibility to ensure that funds are utilized in accordance with the terms and conditions of their gifts. There are additional restrictions that apply to the expenditure of Sponsor funds. Some of these represent controls intended to enhance the fiduciary function of The Apereo Foundation, while others are the result of various legal and administrative constraints. The Sponsored Organization agrees to maintain the same standards with regard to the use of funds as would apply to Apereo alone. In particular:

a. Disbursement of Funds. Apereo will disburse funds from the Fund only upon the receipt of appropriate documentation and for the exact amount paid. Documentation must include:

- i) the name of the person making the expenditure,
- ii) the purpose of the expenditure, and
- ii) an itemized list of the goods or services procured.

A standard receipt (not a credit card statement) will typically serve as a proper itemized list.

b. Reasonableness of Expenditures. In spending Apereo funds, members of the Sponsored Organization must exercise good judgment and maintain a high sense of ethics in making expenditure decisions. Only customary or reasonable expenses incurred while advancing the Project will be allowed. If there is any question about whether a particular expenditure will be allowed, current Apereo guidelines will control.

c. Promptness in Reporting. Apereo will, in its discretion, not be responsible for reimbursements of expenses made more than 120 days before they are reported.

d. No Conflicts of Interest. No disbursements will be made that inure to the benefit of any particular individual, nor to the benefit of any organization in which a member of Sponsored Organization has an interest. It is not a conflict of interest for a member of the Sponsored Organization to be paid a prevailing market rate for services provided to the Project or to Apereo ("Sponsored Development"), provided that:

a) The Sponsored Development is approved either as part of the description of the project or later by the Designated Official, or Apereo, if the Designated Official is a possible recipient of Sponsored Development funds; and

b) Regular records are kept documenting the exchange of services associated with any Sponsored Development Funds.

e. Leadership of Project or Sponsored Organization. Authority to manage the technical, artistic and philanthropic direction of the Project and associated activities of the Project is delegated to the Sponsored Organization, subject to oversight by Apereo.

f. Designated Official. The Sponsored Organization will provide a designated individual to act as authorizing official. The authorizing official shall act as principal coordinator of the Project's daily business with Apereo, and shall have authority to sign disbursement requests for other members of the Sponsored Organization. Expense reimbursements submitted by the Designated Official shall be signed by an employee, officer, or director of Apereo.

g. Maintenance of Records. Apereo and Sponsored Organization will maintain all financial records relating to the Project according to generally accepted funding principles, retain records as long as required by law, and make records available to auditors as required by law.

h. Variance. Apereo retains the unilateral right to spend such funds so as to accomplish the purposes of the Project as nearly as possible within Apereo's sole judgment. Apereo agrees to make a good faith effort to consider any expressed donor intent in making determinations on the expenditure of that donor's gift; however, the Parties acknowledge that expressions of donor intent are not legally binding on Apereo. The Parties agree that all money, and the fair market value of all property, deposited in the Project Fund be reported as the income of Apereo, for both tax purposes and for purposes of Apereo's financial statements. It is the intent of the Parties that this Agreement be interpreted to provide Apereo with variance powers necessary to enable Apereo to treat the Project Fund as Apereo's asset in accordance with Financial Accounting Statement No. 136 issued by the Financial Accounting Standards Board while this Agreement is in effect.

i. Restricted Activities. The Sponsored Organization will not 1) make any changes to the intellectual property status of the Project outside the normal course of development; or 2) enter into any contracts affecting the development of the project with a term over one month or an aggregate value over \$250 USD, without written authorization from Apereo.

j. Conduct as a Sponsored Organization. The Sponsored Organization will comply with Apereo's Code of Conduct, privacy and security policies, and guidance regarding prompt resolution of any disputes or third-party claims arising from the content of the project or publicly-accessible content provided by the Sponsored Organization.

6. Reports to Apereo. The Sponsored Organization will provide Apereo with reports describing the ongoing operation of the Project at least **once a quarter**. These reports will include a report of the work done by the Sponsored Organization in support of the Project, including the details of all money spent, goals reached, and community involvement.

a. Interim and Final Reports. If the Project has an End Date as defined in this Agreement, the Sponsored Organization will also provide appropriate interim and final reports, including any required by funding organizations, with Apereo's assistance and final approval.

b. Other Information. The Sponsored Organization will also provide any other information as needed by Apereo.

7. Tax Reporting. Apereo and the Sponsored Organization will reflect the activities of the Project, to the extent required, on their state and federal government tax returns and financial reports. All disbursements from an Fund shall be treated as payments made to or on behalf of the Sponsored Organization to accomplish the purposes of the Project. The Sponsored Organization will provide Apereo with proper documentation to accomplish this, including furnishing Apereo with the Sponsored Organization's Federal Employer Identification Number (if applicable).

8. Administrative Fees. In consideration of Apereo's agreement to sponsor the Project, and to cover Apereo's expenses in connection with the Project as outlined above, the Project will pay the fees, charges, and expenses as outlined in Exhibit A.

9. Project Assets. Any assets that belong to or exclusively pertain to the Project, whether preexisting or developed during the term of this Agreement, including cash, equipment, intellectual property, and goodwill, are hereby assigned and transferred to Apereo as the Effective Date below. Members of the Sponsored Organization will perform any duties or participate in any processes needed to confirm or perfect Apereo's ownership of such assets. For clarity, Apereo ownership of assets does not extend to 1) copyrights held by contributors to Projects that are otherwise validly licensed for use in the Project under an Open Source license; or 2) personal assets of contributors to the Project or members of the Sponsored Organization. A list of such assets, if applicable, is attached as Exhibit B.

10. Project not an Agent of Apereo. The Signatories hereby acknowledge that none of 1) the Sponsored Organization, 2) the Project, 3) any members of the Sponsored Organization or Project, or 4) the Designated Official are agents of Apereo.

11. Review and Termination. This agreement will be subject to review annually and will terminate if any of the following events occur:

- a. The Project reaches all of its goals as outlined above;
- b. The Project reaches its End Date;
- c. Apereo requests the Sponsored Organization to cease activities that it deems might jeopardize its tax-exempt status and the Project fails to comply within a period of ten (10) days;
- d. The Sponsored Organization fails to perform or observe any other covenant of this agreement, and this failure remains unremedied fifteen (15) days after notice in writing;
- e. Sixty (60) days after either the Sponsored Organization or Apereo has given written notice of its intent to terminate the agreement, or earlier as negotiated by the Parties.

12. Successor Organizations. In the event this Agreement is terminated, Apereo, the Sponsored Organization, and any proposed Successor Organization will work together in good faith to assure the continued success of all parties and comply with any termination or transfer of funds conditions associated with restricted grants. A Successor Organization is an entity that: 1) provides its 501(c)(3)

determination letter to Apereo; 2) expresses its willingness in writing to sponsor the Project to Apereo and accept all responsibilities associated therewith.

In the event that any balance remains in the Project Fund at the time of Termination, the balance of the Project Fund will be contributed as a restricted grant to a new qualified Successor Organization. The transfer of any other assets, including intellectual property or physical assets, will be negotiated between the Successor Organization and Apereo. If no such Successor Organization is identified within 60 days of Termination, Apereo and the Sponsored Organization jointly agree that any remaining balance in the Project Fund will be reassigned to the general fund of Apereo unless a contractual requirement from a third party funding organization requires otherwise, in which case Apereo and the Sponsored Organization will work in good faith to wind down all obligations.

13. Dispute Resolution. Apereo and the Sponsored Organization jointly agree that it is in both parties' best interest to have an efficient method of resolving any disputes that may arise under this Agreement. Accordingly, both parties agree to submit any disputes arising from this Agreement for mediation according to the Dispute Resolution Process provided below:

- a. As a prerequisite to filing any action under this Agreement, a party wishing to raise a dispute must provide written notice and a disclosure of the basic facts and circumstances necessary to understand the dispute to the other party. The parties will then engage in good faith discussion and efforts to resolve the dispute, including a 30-day cure period extendable by agreement of both parties.
- b. If the parties fail to resolve the dispute through good faith two party discussion, the dispute is then submitted for non-binding mediation before a neutral third party, to be chosen jointly by the parties. The mediation shall be conducted and administered by the American Arbitration Association (AAA) under its mediation rules. The costs of any mediator shall be borne by the party requesting mediation.
- c. If the parties fail to resolve the dispute mediation, the dispute proceeds to confidential binding arbitration. The arbitration shall be conducted by one arbitrator from AAA who is selected pursuant to the standard rules of arbitration of the AAA, except for the rules regarding confidentiality. The arbitration shall take place in a city in the United States with a population of at least 1 million, served by an international airport, with the exact city to be agreed upon by the parties. The arbitrator shall issue a reasoned award within six months of the filing of the arbitration notice. Either party may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement or to enforce or vacate an arbitration award.

14. Other Matters.

- a. Change in Status. The Sponsored Organization shall notify Apereo immediately of any change in a) the Sponsored Organization's legal or tax status, b) a change in the purpose(s) of the Project, or c) key administrative or Project personnel.
- b. Choice of Law. This Agreement will be interpreted as if made and fully executed in **New Jersey, United States of America**, without reference to its conflict of law principles.

- c. Amendments. This Agreement may not be amended or modified except in a writing signed by Aperio and the current Designated Official. Assent to and execution of general updates to this Agreement, not specific to any Project or Sponsored Organization, will not be unreasonably withheld.
- d. General Release and Waiver of Claims. In exchange for and in consideration of this Agreement, the Sponsored Organization, all Project Participants, their successors, assigns, officers, and administrators, hereby release and forever discharges Aperio, all sponsoring individuals and organizations, their parents, affiliates, associated entities, representatives, successors and assigns, and their officers, directors, shareholders, agents and employees, from all liability, claims and demands, actions and causes of action, damages, costs, payments and expenses of every kind, nature or description arising out of their relationship with the Sponsored Organization and Aperio. These claims, demands, actions or causes of action include, but are not limited to, actions sounding in contract, tort, discrimination of any kind, and causes of action or claims arising under federal, state, or local laws.

This release is intended to release all liability of any character claimed for damages, of any type or nature, for injunctive or other relief, for attorneys' fees, interest or any other liability whatsoever, whether statutory, or contractual or tort in character, or of any other nature or character, now or henceforth in any way related to any and all matters and dealings of any nature whatsoever asserted or assertable by or on behalf of Sponsored Organization including, without limitation, any loss, cost or damage in connection with, or based upon, any breach of fiduciary duty, breach of any duty of fair dealing or good faith, breach of confidence, breach of funding commitment, breach of any other duty, breach of any statutory right, fraud, usury, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with corporate or other governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any other cause of action.

(Signatures on following page)

Signatures

In witness whereof, the parties hereto have executed this Agreement, which is effective as of the date the last party signs below (the "Effective Date").

Accepted for Apereo:

Accepted for Sponsored Organization:

Signature, Apereo Representative

Signature, Designated Official

Printed Name, Apereo Representative

Printed Name, Designated Official

Position, Apereo Representative

Position, Designated Official

Date Date

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Exhibit A

Statement of Policy

The Apereo Foundation must maintain effective control of business-related expenses in order to maintain its financial viability and tax exempt status. Apereo and each Project are also accountable to our donors to ensure that we manage their contributions wisely and maximize our ability to pursue our charitable mission. As such, Apereo expects those associated with each project to use good judgment and to claim reimbursement for only those expenses that are necessary and reasonable. Excessive expenses, including but not limited to luxury accommodations and services unnecessary for, or unrelated to the furtherance of Apereo's charitable mission are not eligible for reimbursement.

Key Points:

1. Unless you work with Apereo ahead of time, Apereo reimburses allowable expenses only. If you have any questions about whether an expense will be allowable, check with us first. Non-allowable expenses will not be reimbursed. Apereo will work with the Project annually to create a cash flow and expense budget to support resource planning and asset management.
2. Any contract (in time or in money) must be vetted and approved by Apereo before it is signed. The Sponsored Organization does not have the authority to bind Apereo.
3. All activities must tie to Apereo's charitable mission. All activities in the Project's budget must tie with the Apereo's charitable mission in order to maintain Apereo's tax-exempt status.
4. As a fiscally sponsored project, the Designated Official, the Project, and Sponsored Organization represent Apereo; use good judgment at all times. The Designated Official, Project, and Sponsored Organization are responsible for upholding professional norms, especially the Apereo's Code of Conduct.
5. Apereo charges a 10% management fee to recapture expenses associated with the fiscal sponsorship program. The 10% management fee is calculated from net revenue (gross revenue less refunds and payment processing fees) and will be adjusted from the Project's fund balance on a monthly basis.
6. The Sponsored Organization and Project agree to maintain Apereo's policies, both as stated in summary here and as presented in Apereo's policy documents. A detailed document containing all policies and procedures is attached. These points may be updated from time to time. If these points are updated, we will send you a new copy and update the version on the site.

Apereo Foundation Fiscal Sponsorship: Annual Report

Cover Sheet: (Include a copy of this project's current Fiscal Sponsorship Agreement.)

Due Date of Report: The due date for the report is **January 1st**.

If you have questions on reporting requirements
please check with Apereo staff at ed@apereo.org.

Type of submission (please check one):

- ☐ This report completes the requirements for the current year of participation in the Fiscal Sponsorship.

We will be continuing in the Fiscal Sponsorship.

- ☐ This report completes the requirements for the current year of participation in the Fiscal Sponsorship. *We will not be continuing in the Fiscal Sponsorship.*

We understand that if there are any final funds to receive through the Fiscal Sponsorship we will owe an additional report.

Project name: _____

Address: _____

Telephone: (____) _____ Fax: (____) _____

Email: _____ Website: _____

Contact person and role in project: _____

Dates report covers from, ____ / ____ / ____ , to ____ / ____ / ____

Submit cover sheet, 3-5 page report and financial information to: ed@apereo.org

Feel free to email us at ed@apereo.org with any questions regarding Apereo's Fiscal Sponsorship Program, the application, the annual report or their submissions.

Yearly Report Questions and Required Information:

Please send us a short report about the fiscal sponsorship project's progress. We hope that this will be an informal 2-3 page narrative report plus a financial accounting.

I. Impact and Assessment

1. Please restate the goal and objectives as stated in your original proposal and describe progress made.
2. What was most effective? Response should include both qualitative and quantitative impacts where possible.
3. Please identify specific groups and communities that benefited from your project, including, if possible, the total number of people included in these groups or communities.
4. Please identify the benefits provided to the project itself, other Apereo projects or communities, or open source and higher education generally.

II. Challenges

1. Please list any changes of project plans in light of changing issues or significant challenges, whether expected or unexpected, and how dealt with them.

III. Evaluation and Lessons Learned

1. Description of your evaluation process; please indicate who was involved and when it happened.
2. What have you learned? Please describe any lessons or insights from the past year that you intend to apply in the future.
3. How did the funding you received during the year make a difference in your work

IV. Funding and Finances

1. Total funds received by your organization from The Apereo Foundation during the reporting period.
2. Itemize how these funds were spent.

V. Please attach the following items:

1. Attach a budget for your current fiscal year.
2. Attach a list of pending and planned funding requests for the year.
3. Please attach a list of the organization's Board of Directors/Coordinating Committee/Or Other Decision Making Body. This list must include full names, title if any (i.e. board president, board chair, board treasurer, etc.), home address and telephone number, e-mail address and amount of any compensation paid by the organization to each member of the committee if applicable.
4. A list of all staff and/or core volunteers. (There is no need to replicate the list of Board of Directors/Coordinating Committee/Or Other Decision Making Body in this list).